DOCUMENT RESUME

ED 213 772 UD 021 571

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TITLE Legal Issues in Education: A Review of Research.
PUB DATE [81]
NOTE 18p.

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Administrators; *Civil Liberties; Civil Rights; Court Litigation; Court Role; Discipline Policy; Elementary Secondary Education; *Federal Legislation; Higher Education; *Legal Education; *School Law; School Personnel; *State Legislation; Student Rights; *Teachers

ABSTRACT

This paper reviews laws, regulations, and court rulings that teachers, educators, and school administrators should be aware of in order to assert and protect their rights. It provides information on constitutional and legal provisions affecting the day to day operations of schools as well as the rights of teachers, students, and other school personnel in the following areas: (1) student discipline; (2) school board-teacher relations; (3) State and Church relations; (4) dress codes; (5) access to student records; and (6) tort liability. (Author/MJL)

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LEGAL ISSUES IN EDUCATION
A REVIEW OF RESEARCH

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In most teacher education programs for undergraduate students, there is no course offered in school law. Most school law classes are for the graduate student in education. The student graduates from a teacher training program become professional teachers but know little about school law and the legal rights as a teacher.

The civil rights of teachers are often ignored and sometimes openly violated in the schools and communities of our nation. It is paradoxical that in the schools, which has as one of its major purposes "the preparation of citizens for effective participation in a democracy," civil rights have not been consistently applied. One reason for this inconsistency is that teachers are generally unaware of their rights. A recent survey in Massachussetts, for example, indicated that the law gives teachers a much wider range of freedom of speech and action than most teachers realized. Some believed that they voluntarily gave up many of their rights when they signed their teaching contracts.(1)

If teachers were more aware of their civil rights, they could more effectively assert and protect them.(2) And by legally asserting them they would teach students how these historic rights can be protected today.(3)

Justice William O. Douglas in Adler v. Board of Education, 342 U.S. 485,

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493, gave his opinion on the rights of teachers:

> The Constitution guarantees freedom of thought and expression to everyone in our society. All are entitled to it; and none needs it more than teachers.(4)

The Texas Supreme Court in Woods v. Reilly, 430 53 2d (N.D. Texas, 1978) rendered an opinion on the civil rights of teachers:

> Teachers of the public schools being the important element of our population that they are, the sooner and more completely they are advised on their rights or lack of them, the better.(5)

A study of civil rights cases can help teachers develop a better understanding of how our educational, political, and legal system work. First, some teachers who realize that their rights are being abridged feel unable to do anything about it. They think they must choose between resigning or conforming.(6)

A growing number of new laws, regulations, and court rulings are having a major impact on education today. There are many legal mandates that teachers must be aware of if they are to avoid legal pitfalls while carrying out their responsibilities. Some questions have been answered differently by several courts, and opposing viewpoints may ultimately be resolved via appeals to the Supreme Court.(7)

Many legal issues are in a state of flux; constitutions are susceptible to new interpretations by the courts, legislatures pass new laws, and new legal arguments may be more persuasive than current ones.(8)

In Woods v. Strickland, 420 U.S. 308, 95 S. Ct. 992 (Feb. 1975), it was held that officials at public educational institutions could be personally

liable for actions they knew or should have known deprived students or colleagues of well settled constitutional rights. Many educators have no knowledge of this decision; some paid little attention to it because it was a five-to-four decision. However, even such a divided opinion clearly signaled that attention was being turned to a historically unique personal injury in education--the intentional constitutional tort. A number of subsequent constitutuional rights have been violated. "As the law becomes more settled, of course, reluctance to award personal damages may decrease." The Wood decision reinforced the belief that all educators, public and private, should be encouraged to become more familiar with new laws, regulations, and court decisions in order to review their own policies and procedures and try to avoid unnecessary loss of time and money responding to legal claim.(9)

Educators at higher education institutions often have thought of themselves as having quite different concerns than educators at elementary and secondary schools, and vice versa. Today, this is true only in a limited sense.(10)

A recent area in law is the implementation of PL 94 - 142. Educators are affected by new laws and legal concepts regarding accountability for the quality of education and financial exigency, rights of handicapped persons and safety and health.(11)

School litigation is increasing in state and federal courts as the result of the expanding services of the school to pupils and employees. School personnel need to have access to readable sources of information pertaining to school law. School employees should examine carefully the facts and implications of situations that produce school case law. An impressive mass of evidence has accumulated from court decisions regarding what can and cannot

be done legally in the dozens of predicaments that daily confront school personnel and parents. The courts have laid down fairly definite lines of authority governing some of the common situations facing school employees. These can be used as a guide to conduct when an insistent parent or principal presses an issue or when some other person believes he has a just complaint and demands "immediate action."

School employees can decidely profit from an earnest study of some aspects of school law. The situations are many in which educators can act unwisely through ignorance, neglect, or carelessness.(12)

Much of the difficulty stems from the very nature of school work. Definitions of school jobs have been attempted by state statute and contract-phrasing and the development of professional standards of conduct. The failure to define the work of the teacher, principal, and board members in such a way that the general public understands its scope has led to court litigations, violations of ethical standards, and endless frustration and heartache. Such failure has hindered the achievement of high standards of professional excellence.(13)

Pedagogue was a Greek Word for a kind of slave, but to us it means teacher. Although no rational person would contend that the conditions of teachers in the United States of America today are like those of slaves. Until very recently teachers were certainly second-class citizens. The following exerpts from a teacher's contract illustrate conditions that were not uncommon in the 1920's:

> I promise to take a vital interest in all phases of Sunday-school work, donating of my time, service, and money without stint for the uplift and benefit of the community.

> I promise to abstain from all dancing, immodest dressing, and any other conduct unbecoming a teacher and a lady.
>
> I promise not to go out with any young man except in so far as it may be necessary to stimulate Sunday-school work.
>
> I promise not to fall in love, to become engaged or secretely married.
>
> I promise not to encourage or tolerate the least familiarity on the part of any of boy pupils.
>
> I promise to sleep at least eight hours a night, to eat carefully, and to take every precaution to keep in the best of health and spirits, in order that I may be better able to render efficient service to my pupils.(14)
>
> I promise to remember that I owe a duty to the townspeople who are paying me my wages, that I owe respect to the school board and the superintendent that hired me, and that I shall consider myself at all times the willing servant of the school board and the townspeople.

In many school districts teachers are still second-class citizens. Many of the values, beliefs, and attitudes of a hundred years ago are still with us, though we've replaced stagecoaches with jets, frontier lawmen with a computer-assisted FBI, and lap-held slates with over-head projectors, videotapes, and "talking typewriters."(15)

Increasingly, educators are involved in problems that have their resolution in law. For example, a teacher debates whether law and academic freedom clash in teaching a controversial short story in literature class. A principal studies whether the law applies equally in searching students' lockers for stolen library books and narcotics. A superintendent reviews "due process" procedures when he rates a teacher as being unsatisfactory and subject to dismissal. A school board member reminds himself that he may now

be sued for damages under a statue over 100 years old if he violates a constitutional right of one employed in the school district.

Not only have educators become more aware of law, but law itself has become more complex. Problems that were previously resolved easily and without a challenge from the affected party may well now be litigated. This is particularly true when decisions are made without an understanding and application of the current status of law.(16)

Why should one study law? The superintendent, who ten years ago only occasionally called on his board attorney for advice, may today hold daily discussions with him. Today's educator is also dealing with an electorate better informed than ever. The public at large is more likely to challenge an educator's decision. Further, courts have increasingly entertained legal suits, and as a result of decisions, people have been encouraged to challenge school authority in court. If one is familiar with law, not only is he more likely to behave legally, he is also better prepared to prevent problems.

Day-to-day decisions made in and for the public schools frequently have their genesis in law, consequently, people in decision-making positions should have some knowledge of basic educational law. Such knowledge is needed, whether it comes from an attorney or an educator who has studied school law.(17)

School-Student Discipline

The legislature and the courts have a decisive influence on the schools. Educators may not violate the constitutional rights of students. By the same token, when students violate the rights of fellow students, or disrupt the

educational process, educators are obliged to maintain order, discipline, and the welfare of the schools. In the day-to-day operation of the schools, few constitutional issues arise with regard to the discipline of students. The vast majority of disciplinary matters are subject to the reasonable rules and regulations developed by board members, administrators, and classroom teachers. They strive to optimize the educational opportunities available to all students entrusted to their care.(18) Today students are quick to remind educators of their constitutional rights. Educators should remind students of their responsibilities.(19)

Educators who work collaborately with parents and students to develop and implement rules and sanctions have little to fear from the courts. If the rules bear reasonable relationship to legitimate educational purposes, the courts will not question the discretion of the board members, the administrator, or the teacher.

An important responsibility assumed by classroom teachers is that of exercising reasonable care for pupils in their charge to prevent injury to them. While such responsibility, "duty of care," is imposed on all teachers, it is important to note that some teachers bear a greater burden than others, depending on the subject they teach, "potential risk," and age of students. The legal concept involved in this reaponsibility is referred to as "tort law." Tort includes a variety of actions. Slander, libel, false imprisonment, and negligence are all tortious acts. The most common tort, the one most revelant to the teacher, and the one claimed most often, is that of negligence.(20) Tort liability is one area of school law in which all teachers, administrators and other school personnel in the schools should be most knowledgeable.(21)

In the past, most appearances by teachers as defendants in court have involved matters of discipline involving charges that the teacher's privi-ledge to enforce discipline had been abused. Students today know their rights and are thus less submissive to the demands of the school system. Teachers obtain their authority from the "in loco parentis" principle.(22)

In loco parentis is not extensively defined in the law but under common law referred to a person who has put himself in a situation of a lawful parent by assuming the obligations incident to the parental relationship, but without the formalities of a legal adoption. It embodies both the idea of assuming parental rights and discharging parental duties. In usage, it commonly referred to a parent surrogate during a child's minority years. These include step-parent, foster parents, or the master-apprentice relationship. From this concept came the idea that parents have delegated the responsibility to educate. The "in loco parentis" concept applied to schools at a time when education was not compulsory. It probably still applies to private schools or schools and teachers not covered by state legislation.(23)

What has happened with the public schools is that a restricted form of the doctrine has been written into legislation in most jurisdictions. The authority of school personnel thus stems from this legislation rather than from the common law doctrine. This restatement of the law defines teachers as public officers who do not act as delegates of the parents. As public officials in charge of the education or training of a child they have a privilege to use force or impose reasonable confinement unrestricted by parents' prohibitions or wishes. Teachers are acting for the state or municipality, carrying our public policy.(24)

One of the most perplexing problems facing educators at the elementary and secondary levels is enforcement of disciplinary rules in the case of special education students. Two legal issues tend to surface whenever a special education student is disciplined, particularly when the punishment is suspension or expulsion. The first issue is whether the punishment is a "change in educational placement" requiring a new individualized educational plan (IEP) and other procedural safe-guards mandated by section 504 of the Rehabilitation Act and the Education for ALL Handicapped Children Act, P.L. 94-142. The second issue is whether the student is being punished for misconduct that is a manisfestation of his or her handicap. Most states, in administering P.L. 94-142, have taken the position that special education students cannot be punished (suspended or expelled) for misconduct related to their handicap. On January 26, 1981, the United States Court of Appeals for the Fifth Circuit in S-L v. Trulington, 49 U.S.L.W. 2504 (February, 1981) touched on both of these issues. The court ruled in favor of the students.[25]

Teacher-Board Relations

An area of particular concern to educators is the hiring and firing of teachers. In the dismissal of an Illinois teacher who has entered upon contractual continued service (tenure) there are four separate concepts that must be examined. (1) There must be cause for dismissal as outlined in the Illinois School Code Section 10-22.4. (2) In addition to the cause(s) for dismissal there must be specific charges including time, date, type of conduct and place. (3) The board of education must make a finding as to whether the charges are remediable or irremediable. (4) Last, the board of education must follow the strict procedures of the State Board of Education as detailed

in Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois.[26]

Another area is the residency ruling. Is it legal for a board of education to require teachers to reside in the locality in which they work? Since the 1970's there have been a number of court cases challenging the residency requirement. Teachers have claimed it violated the equal protection clause of the 14th Amendment. Basically, the courts have upheld the residency requirement based on the "rational interest of the state" test, that is, if it can be shown that the facts support the state's interest and goals, the statute or school policy will be upheld. Several states such as Illinois, have a statute (Illinois School Code 24.41) that prohibits school districts under 500,000 inhabitants from employing a residency ruling.[27] As defined in the statute, it does not include the city of Chicago which is free to impose its own conditions of employment.[28]

State-Church Relations

Few school problems carry so much emotional baggage as the relation of schools to religion. Since public education is secular education, the two principal school-religion issues can be framed as follows: (1) In what manner and to what extent can religious practices be permitted in public schools, and (2) can public funds go to church-sponsored schools?

The courts have ruled against prayer in public school groups. Some states have permitted a period of silence at the beginning of the school day. Illinois has authorized the observance of a brief period of silence in public school classrooms at the opening of each school day (P.A. 76-21. approved

April 16, 1969, effective July 1, 1969). The act reads:

> In each public school calssroom the teacher in charge may observe a brief period of silence with the participation of all the pupils therein assembled at the opening of every school day. This period shall not be conducted as a religious exericse but shall be an opportunity for silent prayer or for silent reflection on the anticipated activities of the day.(29)

Most of the recent school search decisions have applied a "reasonable suspicion" standard to school officials rather than the relatively strict "probable cause" standard required of law enforcement officials. This decision was handed down in In re L.L. v. Circuit Court of Washington County, 280 N.W. 2d 343 (Wisc. 1979).(30) The reasonable suspicion standard has been applied in the form of a multifactor test, including such factors as the student's age and record, the prevalence and seriousness of the problem to which the search was directed, and the need to conduct the search without a delay.

In Doe v. Renfrow, 475 F. Supp. 1012 (N.D. Ind. 1979), federal district courts in Indiana upheld the constitutionality of using dogs to assist in the search of students for drugs. However, the courts have not found strip searches to be unconstitutional per se, but as the Doe decision exemplified, school officials typically do not sustain the burden of such intrusive intervention.(31)

Dress Code

Courts have tended to move back toward an order and decorum position in the dress and appearance area. Virtually all the recently reported cases have been decided in favor of school officials enforcing dress code

requirements. In Ferrara v. County School Board, 360 So. 2d 371 (Fla. App. 1978), the court upheld the suspension of a student for wearing a mustache in violation of a dress code; in Royer v. Board of Education 365 N.E. 2d 689 (Ohio App. 1977), the court upheld hair grooming guidelines in student dress code. A student and his parents successively lost in separate state court and federal actions against school officials who refused to permit him to participate in the high school graduation ceremony for failure to fully comply with the announced dress requirement. (Fowler v. Williamson, 448 F. Supp. 497 (W.D.N.C. 1978) and Fowler v. Williamson, 251 S.E. 2d 889 (N.C. App. 1979). (32)

Student Records

Controversy has surrounded the issue of who shall have access to students' records. In the past, schools have denied pupils and their parents access to school records. The so-called Buckley Amendment, The Family Educational Rights and Privacy Act, as a rider to the Education Amendment of 1974 changed all this. Not only do parents have a right to access to their childrens' records until the pupils are 18, but the privacy of the records is to be guarded. (33)

Tort Liability

Teachers are not immune to suits for torts. In spite of a strong movement away from the doctrine that school districts are not liable, the teachers should keep in mind that they can be sued.

The opportunity for legal involvement by teachers is very great. A very large and increasing percentage of school law now has its origin in the acts

and conduct of teachers. There is no "rule of thumb" to determine who is negligent. This must be determined by a judge or jury. If a teacher is found to have acted prudently, he will probably not be held liable, but you cannot count on it. The "standard of care" required by the courts is contingent upon the degree of risk involved in the activity and the relationship between the parties.(34)

The use of excessive physical force by school officials on students is illegal, and both state and federal courts have held that a student can sue for damages if a teacher who injures him in the course of administering corporal punishment, even though the use of some physical force is legal in that state.(35)

Although many states have laws prohibiting corporal punishment, no federal court has yet held that it is cruel and unusual "per se" if it is "moderate" and administered with due process procedures to make sure that the student is in fact guilty of misbehavior (Ingraham v. Wright, 498 F. 2d 248 (5th Cir. 1974). It was held in Glaser v. Marietta, 351 F. Supp. 555 (W.D. Pa. 1972) that school officials may not use corporal punishment on a student if the child's parents notify the school that they do not wish it, as this would interfere with the parents' right to raise their children as they see fit.(36) A later case reversed this ruling.

The legal issues in school law are complex and varied. Increasingly the courts are rendering decisions on a case by case basis. Not only is it important that educators be familiar with the statutes and case law that effect the schools, but should attempt to keep abreast of school law by reading and subscribing to legal and law related educational journals.

References

[1]Fisher, L. and D. Schimmel, The Civil Rights of Teachers, Harper and Row, New York, 1973, p.11.

[2]Guerke, Warren E., Legal and Ethical Responsibilities of School Personnel, Prentice-Hall, Inc., New Jersey, 1976, p.153.

[3]Ibid, p.154.

[4]Hazard, William R., Education and the Law, The Free Press, New York, 1978, p.437.

[5]Hudgkins, H.C. and Richard Vaca, Law and Education: Contemporary Issues and Court Decisions, The Michie Company, Virginia, 1979, p.279.

[6]Fisher, Op. Cit., p.39.

[7]Hollander, P., Legal Handbook for Educators, Westview Press, Colorado, 1978, p.27.

[8]Ibid., p.27.

[9]Ibid., p.1-2.

[10]Ibid., p.9.

[11]Ibid., p.9.

[12]Gauerke, Op. Cit., pp.2-4

[13]Ibid., p.4.

[14]Fisher, Op. Cit., p.143.

[15]Ibid., p.143.

[16]Hudgkins, Op. Cit., p.21.

[17]Ibid., p.23.

[18]Ibid., p.9.

[19]Ibid.,

[20]Hammes, Richard P., "Tort and the Teacher: Some Considerations." The Clearing House, Vol. 53, No. 2, October, 1979, p. 105.

[21]Ibid., p. 110.

[22]Ibid., p. 12.

[23]Eberlein, Larry, "The Teacher in the Courtroom: New Role Expectation?" The Clearing House, Vol. 53, No. 6, February, 1980, p. 287.

[24]Ibid., p. 287.

[25]Flygare, Thomas J., "Disciplining Special Education Students." Phi Delta Kappan, Vol. 62, No. 9, May, 1981 p. 670.

[26]The School Code of Illinois, West Publishing Co., St. Paul, Minnesota, 1981, Section 24-12, p. 156.

[27]Ogletree, Earl, City Residency for Chicago Teachers: A Viable Issue," Phi Delta Kappa Newsletter, Vol. 7, No.1, November, 1980.

[28]Ibid., p. 1.

[29]School Code, Op. Cit., p. 318.

[30]Zirkel, Perry A., "A Quiz on Recent Court Decisions Concerning Student Conduct," Phi Delta Kappan, Vol. 62, No. 3, Nov. 1980, p. 207.

[31]Ibid., p. 208.

[32]Vander Horck, Karl J., A Dutch Uncle's Guidebook to School Law, St. Cloud, Minn., North Star Press, 1980, p. 35.

[33]Ibid., p. 45.

[34]Ware, M. and M. Remmlein, School Law, Interstate Publishers, Illinois, 1979, p. 183.

[35]Ibid., p. 189.

[36]Cary, Eve, What Every Teacher Should Know About Student Rights, National Education Association, 1975, pp. 16-19.